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**MAY 27 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Donald G. Russell :  
Application No. 09/372,835 : DECISION ON PETITION  
Filed: August 12, 1999 :  
Attorney Docket No. 97343.00005 :

This is a decision on the petition filed April 18, 2005, requesting that the above-identified application be accorded a filing date of August 12, 1999. This decision on petition also serves to clarify the record.

On August 12, 1999, applicant deposited the above-identified application, which included 12 pages of specification, 5 pages of claims, 1 page of abstract, an Associate Power of Attorney, a 3 page application transmittal, and a check in the amount of \$419.00. On September 3, 1999, the Office of Initial Patent Examination mailed a "Notice to File Missing Parts of Application - Filing Date Granted," (Notice to File Missing Parts), requiring the submission of an executed oath or declaration and a \$65.00 surcharge for its late filing. The Office notes that the specification included references to Figures 1, 2, 3, 4(a), 4(b), 5, 6, and 7; however, applicant did not submit any drawings on filing the application.

On January 31, 2000, applicant filed a executed declaration and power of attorney, a request for a three-month extension of time, and a check in the amount of \$435.00. On March 2, 2000, the Office issued a filing receipt, indicating the filing date for the above-identified application as August 12, 1999. Thereafter, in Office actions dated May 9, 2000, November 21, 2000, and August 29, 2001, the Examiner stated, "drawings are required." Applicant did not submit any drawings in response to the Office actions. In the present petition, applicant explains that he understood this to mean

that formal drawings were required, not that drawings were never filed in the application.

On August 19, 2004, the Board of Patent Appeals and Interference forwarded the case to the Office of Petitions for review and to make a determination with regard to the appropriate filing date for the application because it appeared applicant did not file any drawings in the application.

On April 18, 2005, applicant filed the present petition, 6 sheets of drawings, including Figures 1, 2, 3, 4(a), 4(b), 5, 6, and 7, an amendment requesting entry of the drawing figures, and an authorization to charge any necessary fees. Applicant admits that the application was deposited without drawings. Applicant asserts that the application is entitled to the filing date of April 12, 1999, notwithstanding the omission of drawings, because drawings are not necessary for the understanding of the invention under 35 U.S.C. § 113, first sentence. Applicant further states that the invention claimed is fully described in the specification as filed.

As stated in MPEP § 601.01(f), it is the practice of the Office to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed, indicating that the application has

been accorded a filing date but is lacking some of the figures of drawings described in the specification.

In view of the above, the Office erred in failing to notify applicant that Figures 1, 2, 3, 4(a), 4(b), 5, 6, and 7 appeared to have been omitted on filing the application on August 12, 1999. Nevertheless, the application is entitled to a filing date of August 12, 1999, with zero "0" sheets of drawings as part of the original disclosure.

Accordingly, the petition is granted.

No petition fee is necessary. The \$400.00 petition fee will be credited to Deposit Account No. 50-1402.

**The matter is being referred to the Office of Initial Patent Examination for further processing with a filing date of August 12, 1999, indicating in the Office records that zero "0" sheets of drawings were present on filing, and for the mailing of a corrected filing receipt.**

Thereafter, the matter should be referred to Technology Center Art Unit 2882 for the examiner to review the amendment filed on April 18, 2005, requesting entry of the drawing figures submitted on that date.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

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